OFFICIAL REPORT
AITHISG OIFIGEIL

Local Government and Communities Committee

Wednesday 11 March 2020

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Wednesday 11 March 2020

CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
FIRST-TIER TRIBUNAL FOR SCOTLAND HOUSING AND PROPERTY CHAMBER	2
SUBORDINATE LEGISLATION	29
Local Governance (Scotland) Act 2004 (Remuneration) Amendment Regulations 2020 (SSI 2020/26)	29
Non-Domestic Rates (Reverse Vending Machine Relief) (Scotland) Regulations 2020 (SSI 2020/36)	29
Non-Domestic Rates (Enterprise Areas) (Scotland) Amendment Regulations 2020 (SSI 2020/38)	29
Non-Domestic Rates (Relief for New and Improved Properties) (Scotland) Amendment Regulations 2020 (SSI 2020/40)	29
Non-Domestic Rates (Telecommunication Installations) (Scotland) Amendment Regulations 2020 (SSI 2020/41)	29
Non-Domestic Rates (Transitional Relief) (Scotland) Amendment Regulations 2020 (SSI 2020/42)	29
Non-Domestic Rating (Unoccupied Property) (Scotland) Amendment Regulations 2020 (SSI 2020/43)	29
Non-Domestic Rating (Valuation of Utilities) (Scotland) Amendment Order 2020 (SSI 2020/44)	29

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

9th Meeting 2020, Session 5

CONVENER

*James Dornan (Glasgow Cathcart) (SNP)

DEPUTY CONVENER

*Sarah Boyack (Lothian) (Lab)

COMMITTEE MEMBERS

*Jeremy Balfour (Lothian) (Con)
*Annabelle Ewing (Cowdenbeath) (SNP)
*Kenneth Gibson (Cunninghame North) (SNP)
*Graham Simpson (Central Scotland) (Con)
Andy Wightman (Lothian) (Green)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Caroline Elgar (Scottish Association of Landlords)
Anne Hastie (Law Society of Scotland)
Gordon MacRae (Shelter Scotland)
Gordon Maloney (Living Rent)
Martin McKenna (Scottish Courts and Tribunal Service)
Pauline McNeill (Glasgow) (Lab)
David Reid (Property Managers Association Scotland)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Local Government and Communities Committee

Wednesday 11 March 2020

[The Convener opened the meeting at 09:45]

Decision on Taking Business in Private

The Convener (James Dornan): Good morning, and welcome to the ninth meeting in 2020 of the Local Government and Communities Committee. I remind everyone present to turn off their mobile phones. I welcome Pauline McNeill MSP, who is attending our meeting for item 2.

Item 1 is a decision on whether to take in private item 4, which is consideration of the evidence that is heard today on the First-tier Tribunal for Scotland housing and property chamber. The committee will also decide whether to hold the meeting on Wednesday 18 March in private. Do we agree to take that business in private?

Members *indicated agreement.*

Kenneth Gibson (Cunninghame North) (SNP): Before we move on, I declare an interest as someone who rents out a flat in Glasgow.

Annabelle Ewing (Cowdenbeath) (SNP): I also rent out a flat.

Graham Simpson (Central Scotland) (Con): This is not in my entry in the register of members' interests, but the company that Mr Reid works for—James Gibb Residential Factors Scotland—is the factor of a property that I rent in Edinburgh. That does not mean that I will go easy or hard on him.

The Convener: I will be keeping a close eye on the questions that you ask him.

First-tier Tribunal for Scotland Housing and Property Chamber

09:46

The Convener: Under item 2, the committee will take evidence on the First-tier Tribunal for Scotland housing and property chamber. I welcome Martin McKenna, director of tribunals operations at the Scottish Courts and Tribunals Service; Anne Hastie, member of the administrative justice committee at the Law Society of Scotland; Gordon Maloney, organiser at Living Rent; Caroline Elgar, policy manager at the Scottish Association of Landlords; Gordon MacRae, assistant director of communications and policy at Shelter Scotland; and David Reid, managing director of James Gibb Residential Factors and president of the Property Managers Association Scotland. I thank you all for your written submissions.

I ask for a general overview of the service and the ways in which processes have improved, or not improved, since the tribunal was set up after December 2017. What challenges are the tribunal and applicants currently facing? Not everyone needs to answer.

Martin McKenna (Scottish Courts and Tribunal Service): To be clear, I can speak for the administration of the Scottish Courts and Tribunal Service, but not for the judiciary and independent decision making.

I will give a bit of background information that might be helpful. The housing and property chamber was created in December 2016, and that brought the existing housing tribunals together within that chamber. As we will discuss this morning, the chamber has expanded quite significantly since the measures relating to the new jurisdictions were implemented.

I provided a summary—I do not know whether the committee has that one-page document—that shows all the different jurisdictions that came in under the housing and property chamber. I will not go into detail if the committee has that document, but it illustrates the range of jurisdictions that the housing and property chamber considers.

As we know, in December 2017, private rented sector and private residential tenancy jurisdictions were transferred across from the courts service. In January 2018, the letting agents jurisdiction commenced. I believe that the committee has an interest in the private rented sector, so it might be useful in framing some of the discussions if I provide some detail on that jurisdiction.

From the outset, the volume of private rented sector applications was much higher than was

initially expected. From 1 January 2018 to 31 December 2018, we received 3,521 applications. From 1 January 2019 to 31 December 2019, we received 4,116 applications and cleared 4,058. The comparison illustrates the initial impact of the high volume of applications. We expected to receive something like 700 PRS applications per year and, initially, we planned on that basis. Therefore, over that initial period, backlogs grew and there were delays in delivering our service to some of the users who brought their applications to the tribunal.

Over those first few months, action was taken to increase capacity. We had built the operational delivery machine and the judicial infrastructure to deal with what we thought would be a maximum of 700 applications per year. The number proved to be higher than that, so there was then a systematic process to scale up our capacity to meet the demand. There was an initial injection of staff by March 2018, when it was clear that the numbers were beginning to sustain at that level. The other challenge was deciding whether that was a blip, with the number levelling out to the 700 applications per year that was expected. As we now know, that was not the case, so we have been scaling up and consolidating since then.

By early 2019, the number of housing and property chamber staff had increased to 65; the number currently stands at 65 administrative staff. We have invested significant time and effort in developing and improving the performance of the housing and property chamber. The performance that we delivered over the past 12 months is significantly stronger than our performance over the first year of the tribunal's operation, because we scaled up to get ourselves into a stronger position.

That consolidation of the service that we deliver is illustrated by the fact that, over the past year, the average waiting time to reach an outcome—a decision being made by the tribunal—was about 13.8 weeks. There is a further period beyond that, because there is a statutory requirement for us to wait for four weeks before orders can be issued.

When all the timescales, processes and statutory timeframes are considered, the SCTS believes that we are pretty much in a steady state. There are now no backlogs in our system. Cases are being processed in line with our procedures. We smoothed out the backlogs that had accrued over the early months, and we are now delivering a fairly steady service.

The Convener: Why, initially, was there such an underestimation of the number of cases?

Martin McKenna: There were a few factors. First, when thinking about what to expect, we had to rely on the Scottish Government's analysis that was coming upstream. We understand that some of that analysis was based on the work that was running through the courts. There was the potential for an uplift but, at that time, we were advised that the number should peak at about 700 cases a year. I do not have any more knowledge on that. That was the assumption, and we work with Scottish Government officials to clarify volumes when policies and legislation are being developed.

I suspect that the removal of the fee might have had something to do with the number of cases being higher than expected. A fee was applied in the courts system, but it was removed. Users of the tribunals system might have perceived that the service was accessible and available. I cannot answer your question specifically, but some factors had an impact.

The Convener: There is usually a large upsurge when a fee is removed, so it is a bit of a surprise that that was not taken into account.

I gave Mr McKenna a bit of leeway—he gave us a statement as an answer to a question, which was very clever, but it will not happen again. Does anyone else have any comments?

Caroline Elgar (Scottish Association of Landlords): The main point that I want to make is that the transfer to the tribunal seems to have had a massive impact on the time that it takes for cases to progress through the system. We were promised a more efficient system, and the expectation was that cases would speed up, but that has certainly not been the case. It has been said that applicants have to wait on average 13.8 weeks for a decision. Landlords who are doing an eviction need to wait at least another six weeks beyond that—they cannot even apply until the tenant has owed rent for four months. That is a very long time for someone to wait in order to exercise their rights under the terms of the tenancy agreement.

Gordon MacRae (Shelter Scotland): The trend that has most captured our attention is the disparity in representation. It makes a difference if a tenant is represented at a tribunal; the tribunal is about twice as likely to find in their favour. Tenants are not represented on about 92 per cent of occasions, compared with about 12 per cent for landlords. Landlords are increasingly using formal legal representation, which was not the vision when we went down this route. There is a real power disparity .

The one caveat is that most cases still involve short assured tenancies, so they are not under the new tenancy regime. Some tenants might still think that, under a short assured tenancy, appearing or getting representation does not have the same value because that tenancy regime is

more favourable to landlords than the new one. Therefore, we would not want to read too much into that trend, but it is a trend to be alive to.

The Convener: We might get into that issue later, because I think that my colleagues will ask a couple of questions about it.

Anne Hastie (Law Society of Scotland): I make it clear that I am a non-solicitor volunteer member of the Law Society of Scotland committee. We support the society's statutory duty to work in the public interest.

I agree with Shelter's concern about access to justice. The courts were closer to where people were, and representation from in-court advice projects or volunteers from advice agencies, such as Shelter's housing law service, was available and people had better access to it.

Our concern is that the volume has an impact on agencies addressing homelessness. There is somehow a disconnect between the situation and the Scottish Government's ending homelessness together action plan. It is a human right to have a home, and the society is very keen to explore that further. We have asked some of our members for their views on the committee's questions, but unfortunately the responses have not yet come back. We can pass them on when we get them.

The Convener: That would be very helpful. On your point about the disconnect, it would also be helpful if there were suggestions on how we can reconnect.

I will let Sarah Boyack in.

Sarah Boyack (Lothian) (Lab): Thank you, convener. On how the tribunal works with regard to representation, the submission from the Scottish Association of Landlords says that the process is "less legalistic"—therefore, it is more affordable. However, the evidence from Living Rent and Shelter is that tenants tend not to have representation of any sort, which impacts on the outcome—that point has just been made.

I ask for comments about that lack of representation. Is it because of the scale, as Anne Hastie said, or is it because people do not understand their rights in the process? If there is an issue, what can be done to fix it?

Gordon Maloney (Living Rent): Part of the issue is the need to understand and recognise the massive power imbalance between the parties in these cases. A tenant who works full time and is struggling to make ends meet and who has made an application may wait months before it comes to a case management discussion or a hearing in the tribunal. They may have left the property by then or given up. If they do not have legal support or access to representation, we often find that not only are they unrepresented but they do not turn up to hearings at all. We see cases thrown out for that reason.

It is interesting to hear the thinking about tribunals being more accessible. In some ways, getting rid of the fee makes the process more accessible, but the tribunal is only part of the process. I spoke this week to a tenant who took a case about a deposit dispute to tribunal. They won and a payment order was issued, but they were left on their own after that. We have created part of a process that is meant to be less legalistic and more accessible for tenants, but tenants are left on their own with regard to enforcing the orders that tribunals issue.

In the case that I mentioned, the payment order was issued to the tenant just under a year ago and they have still not seen a penny of it. For them, having to go to the small claims court to get an arrestment of funds or going through an enforcement process is simply not an accessible system, nor is it in line with the ethos that the tribunal is more accessible, less legalistic and free. None of the subsequent processes that tenants are forced to go through is any of those things.

10:00

Sarah Boyack: That is really useful.

My next question is for Gordon MacRae. In the evidence that you sent us, you said that tenants

"are represented only in a small minority of cases",

and that

"this appears to have a significant impact on case outcome."

What evidence do you have for that comment?

Gordon MacRae: The analysis that we did found that tenants who are represented are twice as likely to have a finding in their favour. However, I completely agree with Gordon Maloney that the other element is that, in four out of five cases, the tenant is not present at all.

Sarah Boyack: Sorry, did you say that two or four out of five tenants are not present?

Gordon MacRae: Overall, in four out of five cases, tenants do not attend; they attend one in five cases. In the cases where the tenants attend, if there is representation, they are twice as likely to have a finding in their favour.

There will be reasons for that—

The Convener: Excuse me, can I just clarify that? Did you say that only one in five tenants attend?

Gordon MacRae: Yes.

I mentioned the caveat that the vast majority of cases are still under the short assured tenancy—

the old tenancy—regime. This is only speculation, but there is perhaps a sense that there is less merit in attending because the power imbalance is far greater under the old regime.

To pick up on an earlier comment, the initial vision for the tribunal was that it would be less legalistic. However, on most occasions, landlords have legal representation. We are not seeing a less legalistic approach, so it is still an intimidating environment for tenants who do not have access to information and advice.

The other question is: where are the sources of easily accessible, understandable, actionable advice and support for private tenants? They are not there. We do what we can as a charity, but there is no real access to the level of consumer information and advice that can make a big difference, even before representation is required.

Sarah Boyack: Thank you. I really was not expecting you to say that so few tenants actually turn up to the tribunal at all.

I turn to Caroline Elgar's submission, which says that the tribunal involves a "less legalistic" approach—that your members need to use lawyers less frequently. How does the system feel for your members?

Caroline Elgar: We give advice daily to members who are applying to the tribunal, and from speaking to them, our experience is that they tend either to represent themselves or to be represented by family or, sometimes, by their letting agent. In our experience, they do not tend to be represented by someone with legal training. If possible, it would be really helpful to get some official statistics on that from the SCTS, to see what the actual picture is.

Sarah Boyack: Mr McKenna, what information is issued in advance of a tribunal? What is your perspective on the subject of people who have issued a complaint but do not turn up?

Martin McKenna: A pack of information is provided to all applicants for the various types of application that come in. A lot of information is published on the housing and property chamber website, which is a really useful source of information for people who are accessing the service.

As has been mentioned, although it is more the province of the tribunal, there is a sift process around reviewing the cases and establishing their readiness to go to the hearing. Therefore, there is quite a lot of interaction at that stage with the people who bring the applications. The focus there is on trying to assist them, whenever possible, in making sure that the tribunal has the documentation that it needs to reach the best possible decision. There is an interface through which the tribunal interacts with users in order to support them as much as possible. That is very much the ethos of a tribunal: it has an enabling role through which it tries to interact with users to support them as best it can.

There is the up-front information and the website, and our staff try to assist people who contact us and point them in the right direction.

Sarah Boyack: However, there ends up being a disconnect for the people who raise a case and then do not attend. What level of notice do people get that a tribunal is going to take place, so that they can attend?

Martin McKenna: At the moment, we provide at least two weeks' notice. Within the rules, the requirement is to give seven days' notice, but, on average, we provide a bit more than that. Plenty of notice is provided in advance of a tribunal, partly because of policy issues around the level of attendance and wider factors.

Sarah Boyack: I am keen to get the process side of the issue, so that is helpful. Do you want to come back in on that question, Mr Maloney?

Gordon Maloney: It is important to understand that being legalistic is not a binary matter. In our experience, the tribunal may not need any particular legal expertise.

I should say that I am a volunteer and that I am taking annual leave to be here, as I do when I represent tenants in the tribunal. I have no legal background, and we have had a high success rate in representing tenants. That has taught me that there is something important about experience and professionalism. Obviously, the staff members of a letting agency, who work full time in the field, are able to bring their experience and, for example, do not struggle to take days of annual leave in order to go to a tribunal, whereas tenants may have to do that and may not be able to go.

That means that a tenant may not require a solicitor—although, as we have heard, there is one in some cases—but there is a significant imbalance in the level of experience and background that the different parties are able to bring to the tribunal.

Sarah Boyack: Do you have a suggestion for how you would address that? Should more advice be available to people? There is an information pack, but there is a disconnect between that and people's capacity to process it.

Gordon Maloney: I do not have a specific recommendation. As we suggested, the committee should consider what steps could be taken. It is clear that the services that exist to provide representation—ourselves, Shelter and various others—are stretched beyond breaking point, and we are failing to represent tenants in the numbers

that they need. One answer could be funding for such services.

Gordon MacRae: We have recommended that the Government consider capacity building within the third sector and advice agencies, to increase not only availability but the expertise within advice and support bodies through training and making some resources available. We think that a relatively small investment from the Government could make a significant impact and improve the administration of and attendance at the tribunals.

Sarah Boyack: Is there a geographical aspect to how cases come forward and whether there are different outcomes or different representation issues?

Martin McKenna: Are you directing that question to me?

Sarah Boyack: Do other representatives have views on that as a process issue?

Martin McKenna: I do not know and cannot say whether there is any impact. There is a consistency in our approach, as the training of our members is all done centrally under the auspices of the chamber president. We deliver a service across Scotland.

Sarah Boyack: I did not mean how you deliver the service; I meant whether the geographical issue affects attendance by tenants. Is it concentrated in certain parts of the country?

Martin McKenna: I do not have any information on that. I am sorry, but I cannot help you.

The Convener: Is that information available?

Martin McKenna: I am not sure that we capture that information, but I would be happy to check it out.

The Convener: That would be helpful.

Graham Simpson: I want to go back to what Anne Hastie said about feeling that the courts were closer to the people. Is that a question of where the tribunal sits?

Anne Hastie: I am from East Lothian, and our court was closed, so everybody goes to the court in Edinburgh, which is relatively accessible. To somebody from, say, Dunbar, however, Gorgie is not very accessible. Thinking of the Highlands, perhaps we should consider a more digital approach for hearings. That might be more useful and might help with the capacity issue. Organisations that give advice could do so without physically going to tribunals.

Graham Simpson: Just out of interest, may I ask where the tribunal sits? I think that hearings are dotted about.

Martin McKenna: It varies. Across the towns and cities of Scotland, there are 70 venues that we use regularly, including in the Highlands and Islands. The service is very much a localised one, and we deploy panel members and hearings clerks across the country to support the people who come along on the day of a hearing.

Graham Simpson: It sounds as though you cover most of Scotland.

Martin McKenna: Yes, we do—very much so. The ethos of a tribunal is very much to do with local delivery and with local hearings where we can manage them.

Graham Simpson: I want to ask about a couple of frustrations that I have. One is the transparency of the system; the other is how the system deals with rotten apples—let us say—whether we are talking about letting agents, landlords or even factors. Let us take the second issue first. If the tribunal finds against a factor, letting agent or whoever, what happens? Will you talk us through that?

Martin McKenna: Are you asking for my perspective?

Graham Simpson: I am asking anyone on the panel. You all have experience of the system.

Martin McKenna: There is a process that we run through when we bring a case to a hearing, which varies depending on the jurisdiction that is being considered. Broadly, it involves sifting the case, getting the evidence in place and then bringing the parties along to the tribunal as quickly as we can. A decision is reached through the hearing, or there is a case management decision. The process varies across all the different jurisdictions. The tribunal's function is to consider the evidence and reach a decision.

Graham Simpson: I understand that. Let us suppose that you have been through all that, heard the evidence and made a decision that goes against the letting agent or factor. What happens? I know the answer; I just want you to give it.

Martin McKenna: Once the tribunal has issued its decision, it has completed its function.

Graham Simpson: Do you not issue an enforcement order?

Martin McKenna: Sorry. Yes, we do.

Graham Simpson: That is what I am getting at. You issue an enforcement order against whoever it is. Then what happens? Does anyone have experience of that? Do you have experience, Mr Reid?

David Reid (Property Managers Association Scotland): I can talk only from the point of view of the factoring community. Once the enforcement

order has been made, the property manager or factor has to act on it. There have been cases—I can think of three, off the top of my head—in which companies failed to act after enforcement orders were made against them.

I guess that your point is that, at that stage, our industry—which has had a bad reputation, which is why we embraced the Property Factors (Scotland) Act 2011—needs to see completion, because the process seems to stop at that point. Three companies have been deregistered. However, there is no follow-up in relation to a criminal act potentially having taken place. The 2011 act refers to the issue in later sections.

Graham Simpson: It does. After you have issued an enforcement order, does anyone check whether what is asked for is carried out?

Gordon Maloney: No. In our experience, the onus is on the tenant to see things to completion. An enforcement order is one of the things that a tribunal can issue against a factor or letting agent; there are also payment orders and other things. We find that tenants are left to see things through themselves. As I said, that can be a prohibitively complicated and costly process for many tenants.

A frustration for us is the lack of joined-up thinking. If landlords are being repeatedly found against in the tribunal, the onus should not be on the tenant to be the person who reports issues to the council, landlord licensing and whatever. We would hope that there would be some kind of communication in that regard. Tenants who are busy and who are often not in a position to be represented in hearings, as we heard, are certainly not in a position to see through the enforcement of payment orders or enforcement orders.

Graham Simpson: I can see that you want to come back in, Mr Reid. Of course, we are talking not just about tenants. Private home owners could face the same issue.

Gordon Maloney: Sure.

10:15

David Reid: There is a bit of a disjoint there, as far as I can see, because we have the opposite situation: there is follow-up to ensure that our organisation complies with enforcement orders. Our organisation, and certainly Property Managers Association member firms, will act on that for the reputation of the industry. However, the part of the process beyond that continues to be a concern for us. Fortunately, our member firms act on, and deal with, enforcement orders. The three companies that have been deregistered are not member firms. It is different from the letting agents, because the factors act on enforcement orders and the tribunal follows up on that to make sure that they are carried out. From what Gordon Maloney has said, it sounds as though that does not happen with letting agents.

Caroline Elgar: As you probably know, if a decision is issued against a landlord or letting agent, it is published on the tribunal's website, so the enforcement authorities have visibility of that. Both landlords and letting agents are legally required to register, and landlords need to register with their local authority. The local authority will carry out a fit-and-proper-person test as part of its checks when a landlord applies, which we would expect to include checking to see whether there have been any decisions against the applicant and, if so, following the matter up. If there have been a number of decisions against them, that might mean that they are not considered a fit and proper person to be on the register.

Letting agents are required to register with the Scottish Government, which certainly checks that register. At least one letting agent application has been refused because decisions have been made against that agent, saying that they have not complied with the order. So, work is taking place there.

A number of letting agents are members of our organisation, and, if there are decisions against them, we will follow that up. If agents did not comply with letting agent enforcement orders, we would remove them from our organisation.

The Convener: In practical terms, what difference would that make to the tenant?

Caroline Elgar: If a letting agent was struck off, it would mean that a new letting agent would have to be involved with that property.

The Convener: What would happen if the tenant was chasing up a tribunal's decision?

Caroline Elgar: Sheriff officers would still have to be used to enforce the decision if there was a payment order element to it.

Graham Simpson: There are two member organisations here, and you have both said—and I believe you—that you perform checks yourselves, but there is no formal system. Once an enforcement order leaves the tribunal, that is it.

As Mr Reid well knows, one factor—Apex—was struck off in a recent case, and it was a repeat offender. It almost had a season ticket to the tribunal, as it was there so often. Yet it took far too long to get rid of that organisation, because there was no follow-up. We have a system whereby people get orders, ignore them and carry on as before. That seems to me to be unacceptable.

Caroline Elgar: I absolutely agree that that would be unacceptable. Certainly, from the point

of view of letting agents, I do not believe that that would happen. The Scottish Government intends to enforce the process rigorously, and, if letting agents repeatedly fail to comply with enforcement orders, I expect them to be removed from the register.

David Reid: There is also a stage before that. A number of factors appear not to be registered but continue to practise. Combined with the fact that the factors that are registered do not have any follow-through, that is of great concern to our members.

Graham Simpson: They should be registered.

David Reid: They should be.

Graham Simpson: How are they getting away with that?

David Reid: I was hoping for some answers today.

Graham Simpson: That should not be allowed, should it?

Anne Hastie: We have been looking at the independent scrutiny of tribunals across the board, whether they are employment tribunals, the new social security tribunals that are coming up, in particular, or housing tribunals, which would also fit in. STAJAC, the Scottish tribunals advisory committee, was in existence between 2013 and 2015, and the Administrative Justice and Tribunals Council in England and Wales originally covered Scotland. We do not believe that anything is happening around the independent scrutiny of tribunals, and that should be happening in Scotland.

The Convener: What kind of body would you want to see?

Anne Hastie: It would be along the lines of STAJAC, which produced an incredible mapping report before it ceased to exist.

Graham Simpson: What is STAJAC?

Anne Hastie: STAJAC is the Scottish tribunals advisory committee. If you google "STAJAC report", you can see its most recent report. It identified that there were three pillars of justice: civil, criminal and administrative justice. Out of those, administrative justice is the biggest, but it is the Cinderella of the justice system. Administrative justice affects more citizens than either of the other pillars. Therefore it is important that there is some independent scrutiny of the tribunal system.

Graham Simpson: I agree, and that takes me on to my second line of questions.

The Convener: I will let others come in and will come back to you.

Annabelle Ewing: On an earlier point about remedies, we have discussed the capacity of the tribunal, certain procedural issues and representation. Some feel that that is skewed, with tenants not turning up.

A decision is made—whatever it might be and against whichever side—and one would expect there to be a remedy. When there is, in effect, no remedy, what should happen so that a meaningful remedy is attached to a decision? To go through the whole process to a decision and then for there to be no remedy is probably wasting everybody's time.

David Reid: Deregistration meant that Apex Property Factor Ltd, which was the subject of a recent case, was unable to trade, although it still attempted to trade as a non-registered organisation. That required that legal action be taken by someone in order to ensure that it did not trade as an organisation in the industry. I assume that the situation would be the same for letting agents that do not comply with legislation.

When someone goes to court then does not conform with what the sheriff or judge has said, some form of action will be taken. The difference with tribunals is that there is no such action.

Annabelle Ewing: On factors, Mr Simpson referred to a member of your profession—not necessarily of your organisation—being a serial breaker of the rules. What policing powers does your organisation exercise over its members and what does it do?

David Reid: The Property Managers Association is more an information-exchange platform for its members. It has a disciplinary committee, but we cannot act in any way on an organisation is not a member, which has been the case for every one that has been de-registered so far. That is our concern. We also cannot force them to become members.

As a platform, the major part that the Property Managers Association plays is to say that although the industry has not had a good reputation, the 2011 act has afforded it the opportunity to change. Members have embraced the act as a means to bring themselves up to a certain level. Beyond that, however, the association needs more participation—certainly by people who do not act according to what is in the legislation.

Annabelle Ewing: Thank you. Are there any other comments?

Gordon Maloney: I have concerns about deregistration as a mechanism, partly—but not least—because we have major concerns about current enforcement in relation to unregistered landlords. In theory, a landlord who is not registered can be fined up to £50,000. We

understand, however, that the most a landlord has ever been fined is about £12,000, and that was an extreme case. To be frank, the message is being sent to unregistered landlords that they will either get away with it, or that the fine after a long and protracted process will be negligible compared with what they might save.

One of our recommendations is specifically on payment orders: the tribunal should be able to issue their execution. It cannot be left to tenants to seek out that process independently and at cost to themselves. Where that is necessary—where landlords or letting agents refuse to comply with payment orders and execution is required—that cost should be passed on to them.

Annabelle Ewing: In the view of the Scottish Courts and Tribunals Service, is there precedent in any tribunal that is currently operating with regard to the request for the tribunal to have execution powers on payment orders, or would that be a completely new power for a tribunal?

Martin McKenna: That would be a new power, in the context of the Scottish tribunals. I cannot comment on it from an administrative perspective other than to say that, if the Scottish Government decided to do that, we would have to implement it. I cannot think of a precedent in the Scottish tribunals.

Gordon MacRae: The whole system, when it was envisaged, was grounded in a great deal of good will and an understanding that there would be positive consequences for people who played by the rules. For a good landlord, there should be a market benefit for complying with the rules. As Gordon Maloney quite rightly pointed out, that is just not happening, and for a number of reasons.

One issue is that landlord registration in most local authorities is done by one or two people. In some authorities they sit within the licensing team and in others they sit in the housing department. There is no consistency in how landlord registration is administered or dealt with. Also, it is, largely, just a register—there are no checks, enforcement or active regulation.

We have yet to see the benefits come through. However, I keep the caveat on the table that, because we are not yet seeing cases under the new tenancy regime, we do not know what difference that regime is making to the propensity of tenants to use a tribunal for that purpose, and to whether landlords will gear up in respect of the regime.

The early signs are that tenants have not been empowered as consumers. Landlords increasingly seek legal representation and there is not yet a market consequence for bad actors. The threshold for serious enforcement is massive; the cases of bad landlords that we are talking about have been in the papers for weeks.

At the lower level, landlords can price in the regulatory impact, if they want to. They might be people who are not bad actors but just incompetent amateurs who do not take a professional approach to their landlord responsibilities. The good guys will join organisations such as those that are represented at this meeting. For the others, who fly under the radar, the consequences are still not greater than the profit that they make.

David Reid: As I said at the outset, I am here to represent the factoring community. We find the situation to be slightly different; I do not know whether the processes are slightly different. We get a lot of attendance by complainants. The information on factoring complaints that was published in October 2019 showed that, in seven years, there were 1,448 cases—there are more than 648,000 factored properties and 401 registered factors in Scotland—and that there were 254 enforcement orders and 98 cases in which failure to comply was noted but no enforcement order was made.

10:30

We are seeing a slightly different demographic, in terms of who turns up. The process seems to flow, from start to end, although we have a few ideas about where improvements could be made, which I will not go into now. What is happening is clearly different from what is going on in lettings, which leads me to ask whether the processes are slightly different. I do not know.

Caroline Elgar: Statistics on tenants not attending tribunals have been bandied about, but in the majority of cases we are talking about the respondent, not the complainant not attending. That is the difference. We are talking about not the person who brought the action but the person against whom the action was brought.

Annabelle Ewing: May I throw a wee curve ball? Some people might say that if there is no fee, people will just go along to the tribunal and see what happens, whereas if there is a fee people have to consider whether bringing a case is the best use of their money. Do panellists have comments on that? Mediation is another possibility, of course. I am looking at the bigger picture.

Anne Hastie: That was an issue with employment tribunals. When fees were removed, all bets were off; the volume of cases just shot up.

We have concerns about enforcement. We are involved in work with Jamie Hepburn and the Government on statutory debt solutions.

Enforcement in relation to rent arrears is unlikely to happen, because people invariably do not have the money. I noted a case in which universal credit was the issue. I was concerned because the tenant—who had actually turned up—said, "Oh, well. It's okay. I'll be evicted, but I'll maybe get other benefits and another house and it'll be fine." That should not happen.

We must also consider the cost to local authorities. A local authority homelessness application used to cost about £15,000—that was at least 10 years ago. The saving on the tribunal side does not match the cost to the public purse of local authorities having to rehouse people.

I will also throw in that there are costs to the national health service, in relation to families' wellbeing and child poverty.

Annabelle Ewing: These are big issues for society to get to grips with, in whatever way is deemed best. There are a lot of knock-on costs to factor in.

David Reid: Members of the factoring community are certainly calling for a fee, given the demographics of the complaints. There have been repeat complaints when people failed to get enforcement orders and there are frivolous and vexatious complaints. Our members have asked whether a fee could be considered, because we truly believe that a fee would stop some complainants who do not get enforcement orders against their factors.

The Convener: Is there a sifting system, so that vexatious complaints are treated differently?

Martin McKenna: There is not a sifting system on the tribunals side of things. Cases are considered on their merits as they come through the process, and decisions are then made. You will appreciate that some of the broader aspects that have been mentioned are not considered by a tribunal, which is an independent judicial body.

David Reid: The sifting process is another issue that concerns our members. We have seen a case come before the tribunal in which the complainant was not even the homeowner, although the code of conduct under the 2011 act is very specific on that.

We have also seen cases pass the sift that we believe should not have and which resulted in costs to taxpayers, which includes everyone sitting in this room. We therefore call for a better sifting process.

Jeremy Balfour (Lothian) (Con): Good morning. I would like clarification on a couple of points. I was interested to hear Mr MacRae's comment that only one in five tenants attends the tribunal hearing. What is the figure for the time when such cases were dealt with in the sheriff courts? Was it higher or lower? Have you any evidence on that?

Gordon MacRae: I do not have that number to hand, but it was not high. Caroline Elgar is quite right about representation: more often than not, if tenants appear they are respondents. The number would be low, but that is because there is a question of access to justice. For cases in the sheriff courts, tenants can seek legal aid, depending on their circumstances, so that route might be open to them. For serious cases, different forms of representation would be available, but I do not have a number to hand for those.

Jeremy Balfour: Would anyone else like to comment?

Anne Hastie: The advice services that are based in courts, and which are funded through the Scottish Legal Aid Board, make themselves available to anyone who does not have representation. However, if services are at the courts they will not be available at the housing tribunal, because going to a different venue would just spread their resources too thinly.

Jeremy Balfour: I will go back to Mr Maloney's response to Annabelle Ewing and the idea that there should be a one-stop process so that once an enforcement notice is issued by the tribunal it should be enforced through it. It is 30 years since I cut my teeth in the small claims court here in Edinburgh, so I am just trying to be clear about the process. It can take two or three hearings. Are you suggesting that those should all be done by the tribunal rather than by the sheriff court?

Gordon Maloney: I do not have a ready-made solution. I do not know how the idea would work, but I know that when a landlord chooses not to comply it is far too easy for them to get away with that and far too difficult for a tenant to do anything about it. Perhaps having the tribunal execute the payment orders is not the right mechanism, but what we have in place at the moment is not working. We need to make the process smoother, easier, more accessible and less costly for tenants.

That might also answer an earlier question. We support tenants through a process that is free, and they win and get a payment order. Being faced with even small fees—of around £100, as some fees in the small claims court are—for a payment order for a significant amount, is often enough to put people off. We need to explore how to make the process more accessible. I cannot see how introducing a cost would do that.

Jeremy Balfour: My final question is on how the tribunals operate. I understand that their proceedings are not recorded, which surprises me. Certainly, the proceedings of the tribunals for PIP

and DLA that form part of the Scottish Government's plans will all be recorded, and it is the general practice of the Department for Work and Pensions to record tribunal hearings. Why do we not record the hearings so that there is a record of the evidence that has been given?

Martin McKenna: That decision was taken a couple of years ago by the chamber president. As members will appreciate, because the process is judicial the decision is also a judicial one. However, we are currently reviewing that. Across the SCTS and the tribunals that we support, there is on-going work to consider broader use of digital recording, which might be introduced.

Jeremy Balfour: Do you accept that it would be good practice to record proceedings, which would give both parties much greater clarity on the evidence that has been given?

Martin McKenna: Sure. It is not a matter for me directly, but it is a well-established practice across tribunals in other jurisdictions and it is being considered for this one at the moment.

David Reid: That is a good point. Our member firms have raised concerns that recording of tribunals, which was done previously, was removed. They have had cause to challenge tribunal decisions because information that they believed was discussed on the day was missing from the decisions, so we are looking for that facility to be restored.

Jeremy Balfour: With respect to the evidence that is taken on the day of a tribunal, can you clarify from experience whether the tribunal is quite narrow in terms of the issues that it looks at, or is everything put on the table? Can issues that were not put in the initial documentation be opened up and evidence taken on them?

David Reid: My experience is that that is very inconsistent and depends on the tribunal that we are in front of. At times there is a clear lack of understanding of the difference between freehold and leasehold, and of the fact that we manage developments for and on behalf of homeowners.

I have found sometimes that everything is put on the table, when it should have been sifted long before then in terms of which part of the code of conduct is to be focused on. I have also found it challenging in tribunal that a line is taken by a tribunal member in order to assist a layman—perhaps quite rightly—down a certain path. I am not the only one to have experienced that.

The Convener: Kenny, do you want to ask anything?

Kenneth Gibson: No.

Graham Simpson: I have a question on transparency. I am of the view that you should be able to follow a case to its bitter end. If an enforcement order is not complied with, that should be reported to the police.

I tried to meet the president of the tribunal in 2018, but she refused to meet me. I do not know why she would refuse to meet an MSP. It was disappointing—that is the best I can say about that. Since then, I have been in correspondence with Government ministers and Police Scotland. All of that was in response to a few constituents who came to me to complain about a particular letting agent. I thought, "Let's see how the system works."

I found out how many enforcement orders against letting agents—not factors—had not been complied with. Ten had been reported to the police, so I asked the police what had happened to those 10 cases. They told me that eight had been referred to the Crown Office and Procurator Fiscal Service and one was being processed. I followed that up with another request, and was told that the original response was not right and that only one of the 10 had been reported. I cannot find out, because nobody will tell me, what has happened to that one case—you cannot follow it. What is the point of this system if you cannot discover what happens to somebody who has fallen foul of the rules? You cannot follow that case—it is ridiculous.

You are nodding, Mr McKenna.

Martin McKenna: I cannot answer that. I do not know the specific case that you are referring to.

Graham Simpson: Neither do I, because nobody will tell me. I do not know. Nobody will say—they just give me numbers. I cannot follow individual cases, and I am an MSP. If I was the poor person who made the complaint, how would I follow the case? It should be a matter of public record. If a system is supposed to be open and transparent and it clearly is not, it needs to be reformed.

Annabelle Ewing: Presumably the complainant, as a party to the action, would be able to contact the clerking system of the tribunal and get information.

Martin McKenna: I think that that is right. Clearly, when cases are under the auspices of the tribunal, they will be managed. There is transparency; if people who are involved in the case need information, we provide it. It will go through a process.

It is worth recognising that the tribunal process comes to an end, and if a case moves beyond that, the tribunal has limited powers. It can only discharge the functions that it has available to it. After that it becomes a broader issue, which I cannot—

Graham Simpson: I agree. I just think that it should be more joined up. We should be able to publicly—

Anne Hastie: That could be considered in any independent scrutiny that takes a wider view.

I should correct what I said earlier: STAJAC is the Scottish tribunals and administrative justice advisory committee.

The Convener: I did wonder what "STAJAC" meant.

Anne Hastie: We can send the link.

10:45

Gordon MacRae: For us, the issue raises a concern about whether policy changes are working. It is possible for individuals to follow their own case—although it is not easy and is time-consuming—but there is an issue about how we can get the transparency that we need to in order to know how the system is working. There are ways in which we should be improving the data and the transparency around the tribunals, so that we can better evaluate whether the approach is working and is allowing people to access the right things.

A lot of what has been said today is caveated by shortcomings in the data and the overlaps between the old system and the new system. It is a partial view. Shelter is trying not to be too declaratory at this point about whether the new system is working, because we genuinely do not know, and it is too early to say.

Graham Simpson: Mr Reid, your submission makes a point that I think I have already made. It says that the Property Factors (Scotland) Act 2011 is unclear about how a factor should be removed. In other words, there does not seem to be any trigger point for taking that action; it is essentially up to the Government minister whether he or she decides that the factor is bad enough. Of course, that means that the Government minister has to know about them. There does not seem to be a formal system in that regard.

David Reid: Like you, that is the point at which we lose sight of the process, and there are a number of other issues, too. Going back a few stages, if something is sifted out, member firms would have hoped to have had access to that information, because they see it as gap analysis for their business—there might be something in there. There are pros and cons to do with the detail of the decision not having been recorded in the situation that you have just spoken about. There are a number of anomalies that we would like to be addressed.

Graham Simpson: If we had something like that, we might have been able to deal with Apex and other such companies more quickly. That would be a good thing.

David Reid: Absolutely.

Graham Simpson: The Law Society raised an issue that I think was an idea of one of the bodies that is represented on the panel, which was that there should be a housing dispute service. Anne Hastie, could you say more about that?

Anne Hastie: That is something that is happening in England and Wales. We are looking at what is happening then there to see whether there would be any benefit in having a similar service in Scotland. Initially, the idea would be to make access to representation and advice simpler and easier rather than just signposting people to advice, because you have to make sure that the capacity is there to take on the cases. If there was a body such as a housing dispute service that could carry out investigations, that might actually be quite useful in this context. However, it is still early days.

Graham Simpson: That would operate in a different way from the tribunal, though. Would it have more of a mediation role?

Anne Hastie: Yes. It would involve alternative dispute resolution.

Graham Simpson: Okay. I do not know what the other members of the panel might think but, to me, it sounds like that might be easier for everybody than going through a more formal route.

Caroline Elgar: I think that we need both systems. The problem that we potentially have at the moment is that we have a judicial system that is free to apply to, but we do not have much availability of free mediation services that people can go to if they want to resolve a dispute before it gets to a point at which the parties cannot speak to each other in order to resolve it. There is a bit of a gap there.

Graham Simpson: Thank you.

Sarah Boyack: The tribunal will take on additional responsibilities to those that it currently has. We have picked up one or two disconnects. One seems to be that, once a decision has been taken, there is not necessarily any follow-up. Who should be filling in at that point?

Martin McKenna: I suggest that that is a broader policy issue that must be addressed—that is the theme that is coming through. The tribunal will only discharge the functions and authority that it has, and can only take that as far as legislation allows it to go. The question of whether more power is needed should be part of the broader

review of the legislative requirements and the policy position. The tribunal would sit downstream of that. It will accept whatever responsibilities are conferred upon it, but I cannot give an answer about how that would best be done.

Sarah Boyack: I am interested in the views of others. There is the situation in which people can avoid having to go to a tribunal, by reaching an agreement or a commonsense solution; there is the issue of making the tribunal work; and there is the issue of what happens when a case has been decided but the decision is not implemented or followed up. There seems to be a gap there. Do others have any comments?

Gordon Maloney: I can talk about the cases that I have been involved in. Almost universally, we try to resolve things informally first. If the landlord responds the email or agrees to meet the tenant, the tenant will speak to the landlord—or try to—but that almost always goes nowhere. We have had cases where landlords have made offers or goodwill gestures of, for example, £100, but the tenant has rejected that and gone to a tribunal and been awarded 10 times that amount.

I would worry that, in a situation with such an acute power imbalance between tenants and landlords, a mediatory service without the capacity to address that will not give the tenant the kind of justice that they could hope to achieve in a tribunal. I have big concerns about how that would work in practice.

Gordon MacRae: That sits alongside a few issues about rights enforcement for people in the housing system, and not just in the private rented sector. There is no real consumer interface for renters or social tenants that can ensure that their rights are enforced without having to rely on the court system. The priority now is to make the tribunal work and to let it bed in and see what the impact of the new tenancy regime is going to be. However, that should not stop us picking up on emerging issues such as the follow-through and access to information about representation.

There are things that we can do now. We have already mentioned building capacity in the sector. We would be open to reasonable solutions to the follow-through issue. We must be aware that that will apply as much to tenants as it will to landlords. People have mentioned rent arrears, and universal credit has an impact on that. A massive amount of public money goes to private landlords through the housing benefit system, which cannot be seen only in the context of a private contract between tenant and landlord. There are public reasons why some people get into difficulty.

Our concern is that, when it comes to housing, the onus is on the individual to enforce their rights, and there is not really a representative body.

Jeremy Balfour: Everyone seems to agree that there needs to be some kind of review of how this is all working. Mr MacRae mentioned that we are still working with people who have short assured tenancies and we have not really moved on to deal with the new letting arrangements. Without being too specific, do you think that the review should wait until we have seen how the new system works, or should we carry out a review now, before we have seen that?

Gordon MacRae: It is too early to come to a view about the impact of the new tenancy regime, but we can come to a view about how people access advice, information and representation, and about the issue that has been highlighted today of follow-through on enforcement. Those problems come from systems and processes, rather than from the lag in the change of regime.

Anne Hastie: To use another analogy from the employment tribunals, in my experience, when someone got an enforcement order from an employment tribunal, they would have to go and find a sheriff officer and get them to serve it and then, if it was not paid, the case would go back into the courts again. It is a bit circular.

The Convener: Yes. There seem to be a lot of things that are circular and, as Sarah Boyack says, disconnected. This discussion has been useful.

Annabelle Ewing: I have a brief question on a slightly different topic. Do we have clarity on how many appeals there are to the Upper Tribunal?

Martin McKenna: In the past 12 months, there have been 46 appeals to the Upper Tribunal, which constitutes 1.1 per cent of the applications running through the chamber of the First-tier Tribunal. That is broadly representative of what we find across tribunals in Scotland—about 1 per cent of cases go onwards as appeals to the Upper Tribunal.

Annabelle Ewing: Do you have any breakdown of those figures to show who the respondent was?

Martin McKenna: I do not have that with me—sorry.

The Convener: I ask Pauline McNeill whether she has any questions. Remember that we are discussing the First-tier Tribunal for Scotland's housing chamber.

Pauline McNeill (Glasgow) (Lab): Thank you, convener. I have questions in two areas. First, I want to continue on from Graham Simpson's question about transparency. I previously met Jessica Burns, who was very much in favour of more transparency and publication to give more information. To clarify, do you publish the outcomes of cases? Of the 4,000-odd cases that

you said were cleared, do you have any figures on which of them were upheld?

Martin McKenna: I do not have those statistics to hand, but we publish all the decisions on the website—that is all for public consumption.

Pauline McNeill: So, people can see the number of cases that are upheld.

Martin McKenna: Yes.

Pauline McNeill: I have another issue to clarify. Gordon MacRae said that only one out of five people—

Gordon MacRae: It was that four out of five people do not turn up.

Pauline McNeill: Yes. How does that square with the 4,000 cases that cleared in the past year? If all the people had turned up, would the number of cases be higher?

Martin McKenna: No—that figure is for the decisions that are reached by the tribunals that hear those cases, whether or not people turn up. That is an overall clearance number. I do not have to hand a breakdown of the figures showing attendance rates across the jurisdictions that we manage, but I suspect that, as was said, the levels of people who turn up may well vary from jurisdiction to jurisdiction. That number is the overall number of decisions that were reached by the tribunals, whether or not people turned up.

Pauline McNeill: My second area of questioning is on the powers of the tribunal to increase rents. I should say that I am drawing up a member's bill on that issue, because I want to address it. I was surprised to learn that, when someone goes before the tribunal, the panel can increase their rent. That must be a big barrier to people applying, because why would someone who wants to get their rent reduced risk applying to a panel that might decide to increase it? Can anyone help me with the rationale for that? Is it to do with applying a market rent? If a landlord has already set the figure and someone wants to challenge it because they think that it is too high, why should the panel have the power to increase it further? Any information on that would be helpful.

Gordon Maloney: I will talk about that in a moment, but I first want to quickly go back to the figure of four out of five people not turning up, which I think is a dramatic underestimate. If we look at applications in the round and consider those that never make it to a case management discussion or hearing, we find that there are a huge number of cases in which tenants make an application or ask for further information and do not respond to that, so they never come to a hearing. Therefore, the figure is probably significantly higher than the four out of five who do not come back.

11:00

The process for rent appeals is that, if a tenant is issued with a rent increase, they can refer that to a local rent officer, who can reject the increase, lower it or issue a higher figure. The same process is repeated at the tribunal. When we speak to tenants, we find that one of the most pressing issues is the high levels of rent, and they do not have faith in the process. When we give tenants advice, we cannot guarantee that the tribunal or the rent officer will not issue them with a higher rent. The database of decisions shows a number of such examples, but I will give a hypothetical example. Two tenants in a flat are paying £900 a month, but their landlord increases that to £1,000 a month. They refer that decision to the tribunal, and the tribunal not only upholds the increase but sets it even higher, at £1,200 a month. In such situations, we can understand why tenants have no faith in the process.

The Convener: Does anybody have any statistics that show how often such situations happen? Like Pauline McNeill, I am surprised at that, but I am even more surprised that the outcome would be a figure that was more than the landlord was asking for. How often does that happen?

Gordon MacRae: It happens frequently enough. I do not have statistics to hand, but we have certainly had cases in the past year. The issue is the metric that is applied. It is not a question of whether the rent increase is fair; it a question of the market rent in the area. Even if we tweaked the question to ask whether the proposed increase is fair, that would remove the prospect of the decision being an increase above what is being proposed.

It is right to say that those are the risk factors that tenants have to judge when seeking to exercise their rights. There is not an equal risk to landlords, given that they know that, broadly, rents are increasing quickly because of the scarcity of supply. Once the new system is in place and we start to see the effect that that is having, we can look at that area, but we certainly support removing the option of increasing rent above what was proposed.

Anne Hastie: There would also be a knock-on effect on housing benefit, because that is set at market rents.

The Convener: Sometimes it is better for the tenant to keep quiet, because there is that risk.

Anne Hastie: Absolutely.

Gordon Maloney: I can give an example of a case that we had this week. A tenant on a short assured tenancy was issued with a £7,000 rent increase for the year. They could challenge that

decision, but they would just be evicted. We have another case in which a tenant has been issued with an £8,000 rent increase. The landlord is in Edinburgh and is getting ready for the festival, and it was clear to us that their decision was retaliatory.

On the question about the numbers, the tribunal's decisions are available. I do not have the exact statistics, but the numbers are significant. The key point is that tenants are not using the process, because they cannot be sure that they will not end up in a worse situation, so they end up just leaving. In our submission, I said that good work was done through the Private Housing (Tenancies) (Scotland) Act 2016 and the creation of the tribunal by protecting tenants from eviction and, specifically, by removing the no-fault grounds for eviction. Our concern is that that good work is being undermined by landlords' ability to, in essence, evict tenants through rent increases.

The decision in the case that I referenced was clearly retaliatory. The tenants threatened to take the landlord to the tribunal in response to something that they were trying to do. The tenants dropped the case but, a week later, they were served with an enormous rent increase, and they are just going to leave.

The Convener: You raise a very interesting point that I was not aware of.

Pauline McNeill: I have a point of information about applying market rents, because that is what I thought that the witnesses would say. You will be aware that there was a social landlord case in Govan in which the tribunal applied the market rent by googling rents in Glasgow—I thank Mike Dailly for his work on that case. This might be a subject for another day, but I looked in depth at the case and it struck me that work definitely needs to be done within the tribunal system about how tribunal judges apply their decisions. The committee might want to look at that issue further, because what happened in that case should never have happened in the first place. I represented people who had the market rent applied by their social landlord because they could not afford to join in the action.

The Convener: You mentioned Jessica Burns. For the record, will you tell us who she is?

Pauline McNeill: I think that Jessica Burns was the previous head of the tribunal service.

Martin McKenna: Actually, Jessica Burns was the regional judge for the social security jurisdiction. Aileen Devanny is the housing and property chamber president. Lady Smith is the president of the Scottish Courts and Tribunal Service. She is the senior judicial leader who looks after all the Scottish tribunals.

Pauline McNeill: That is right. Jessica Burns, supported by other people in the system, has said that, as Graham Simpson said, more transparency would be desirable.

The Convener: I thank all the witnesses for attending today's session, which was very useful. We will consider the next steps on the matter when we go into private session later.

11:06

Meeting suspended.

11:11

On resuming—

Subordinate Legislation

Local Governance (Scotland) Act 2004 (Remuneration) Amendment Regulations 2020 (SSI 2020/26)

Non-Domestic Rates (Reverse Vending Machine Relief) (Scotland) Regulations 2020 (SSI 2020/36)

Non-Domestic Rates (Enterprise Areas) (Scotland) Amendment Regulations 2020 (SSI 2020/38)

Non-Domestic Rates (Relief for New and Improved Properties) (Scotland) Amendment Regulations 2020 (SSI 2020/40)

Non-Domestic Rates (Telecommunication Installations) (Scotland) Amendment Regulations 2020 (SSI 2020/41)

Non-Domestic Rates (Transitional Relief) (Scotland) Amendment Regulations 2020 (SSI 2020/42)

Non-Domestic Rating (Unoccupied Property) (Scotland) Amendment Regulations 2020 (SSI 2020/43)

Non-Domestic Rating (Valuation of Utilities) (Scotland) Amendment Order 2020 (SSI 2020/44)

The Convener: Agenda item 3 is the consideration of eight instruments that are subject to negative procedure, which means that the provisions will come into force unless Parliament agrees to a motion to annul them. No such motions have been lodged.

The Delegated Powers and Law Reform Committee considered the instruments at its meeting on 3 March 2020 and determined that it did not need to draw the attention of Parliament to the instruments on any grounds within its remit.

Given that no motion to annul has been lodged, if no member objects, I propose to ask a single question on all the instruments. However, I will first allow members the opportunity to put on record any comments or observations that they might have on the instruments. Is that approach satisfactory to the committee?

Members *indicated agreement.*

The Convener: In that case, before putting the questions on those eight negative instruments, I invite any comments or observations.

Sarah Boyack: I gave notice before the meeting that, although I do not wish to delay or oppose it, I have a couple of questions in relation to SSI 2020/38, which is about non-domestic rates in enterprise areas. I would like more information from the Scottish Government about the numbers of properties that will be impacted and its assessment of the effectiveness of the regulations that we have had before on that issue.

SSI 2020/26—on Local Governance (Scotland) Act 2004 remuneration—looks like a good regulation, because it gives councils more flexibility when councillors have a paid leave of absence. In the current climate of enabling people to take maternity or paternity leave, that is a good regulation and I am glad that it is in front of us today.

The Convener: We will write the letter as suggested. Is the committee agreed not to make any recommendation in relation to any of the instruments listed in today's agenda?

Members *indicated agreement.*

11:14

Meeting continued in private until 11:35.

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

All documents are available on
the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers
is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@parliament.scot

The Scottish Parliament
Pàrlamaid na h-Alba